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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/169021

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 28, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Eau Claire County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 12, 2016, at Eau Claire, Wisconsin. Hearings scheduled for October 13, 2015, November 17, 2015, and December 15, 2015.

The issue for determination is whether the department may intercept the petitioner's federal income tax refund to recover an overpayment of FoodShare benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

Eau Claire County Department of Human Services  
721 Oxford Avenue  
PO Box 840  
Eau Claire, WI 54702-0840

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.

2. It was determined in *DHA Decision No. FOP-167291* that the petitioner was overpaid \$4,316 in FoodShare benefits from November 1, 2012, through October 31, 2014. In addition, he had previous opportunities to appeal the overpayment.
3. The Department has mailed the petitioner three dunning notices, the latest on July 2, 2015.
4. The Department seeks to intercept the petitioner's federal income tax refund to recover the overpayment of FoodShare.

### **DISCUSSION**

At least annually, the Department of Workforce Development must certify to the Department of Revenue the amounts it has determined it may recover because of an overissuance of food stamp benefits. Wis. Stat. § 49.85. The Department of Workforce Development must notify the recipient that it intends to certify the overpayment to the Department of Revenue for a setoff from his state income tax refund and inform him of his right to appeal that decision. Wis. Stat. § 49.85(3).

The petitioner's right to a hearing is described in Wis. Stat. § 49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

This matter has been going on for some time. The agency had notified the petitioner of an overpayment a couple years ago, but he did not appeal. He then filed an appeal in 2015, which he lost. His request for a rehearing was also denied. It was determined that he must repay \$4,316 in FoodShare benefits he received from November 1, 2012, through October 31, 2014. The current matter was rescheduled three times because he wanted time to find an attorney, which he believed would allow him to reopen the overpayment and sue whatever governmental entity abused his rights. When the hearing was finally held in January, he indicated that he had found an attorney, but the attorney told him that he had no grounds for any of his desired actions, including reopening the overpayment claim and dismissing the decision to intercept his taxes.

The Department has correctly determined that it may intercept any federal income tax refund the petitioner receives to repay his overpayment of FoodShare. However, as was explained to him several times, this has no practical effect because he does not pay income taxes now and probably will not do so in the future. Thus, there is nothing for the Department to intercept.

### **CONCLUSIONS OF LAW**

The Department correctly seeks to intercept the petitioner's state income tax refund to recover an overissuance of FoodShare benefits.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 5th day of February, 2016

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\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 5, 2016.

Eau Claire County Department of Human Services  
Public Assistance Collection Unit